

32 - 1578

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE  
UNITED STATES

Office-Supreme Court, U.S.  
FILED

MAR 22 1983

ALEXANDER L. STEVAS,  
CLERK

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner

vs.

OVERTON DAVID JOHNSON,

Respondent

PETITION FOR WRIT OF CERTIORARI  
TO THE ALABAMA SUPREME COURT AND  
ALABAMA COURT OF CRIMINAL APPEALS

CHARLES A. GRADDICK  
ATTORNEY GENERAL OF ALABAMA

JOSEPH G. L. MARSTON, III  
ASSISTANT ATTORNEY GENERAL OF ALABAMA

WILLIAM D. LITTLE, III  
ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
250 Administrative Building  
64 North Union Street  
Montgomery, Alabama 36130  
(205) 834-5150

ATTORNEYS FOR PETITIONERS

### QUESTIONS PRESENTED

Whether an interpretation placed by the Alabama Court of Criminal Appeals upon Alabama's version of the Uniform Criminal Extradition Act, which interpretation requires that a request for interstate extradition by means of an affidavit be accompanied by a warrant issued pursuant to the affidavit, is contrary to the dictate of 18 U.S.C. § 3182 and therefore unconstitutional.

### PARTIES

In the Circuit Court of Etowah County, Alabama, and the Alabama Court of Criminal Appeals the parties were Overton David Johnson, Respondent herein, and the State of Alabama, Petitioner herein.

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### OPINIONS BELOW

The order of the Circuit Court of Etowah County, Alabama, denying the petition for writ of habeas corpus of the Respondent herein is not reported but is submitted as Appendix "A" hereto.

The judgment and opinion of the Alabama Court of Criminal Appeals has not yet been reported but is submitted as Appendix "B" hereto.

The denial by the Alabama Court of Criminal Appeals of the application for rehearing of the State of Alabama is not reported but is submitted as Appendix "C" hereto.

The denial by the Alabama Supreme Court of the petition for writ of certiorari of the State of Alabama is not reported but is submitted as Appendix "D" hereto.

## JURISDICTION

The Order of the Alabama Supreme Court denying the petition for writ of certiorari of the State of Alabama was issued on January 21, 1983. This petition is filed within sixty days of that date.

The jurisdiction of this Honorable Court is invoked under 28 United States Code, Section 1257(3).

## CONSTITUTIONAL PROVISIONS INVOLVED

Article IV, Section 2 of the United States Constitution provides in pertinent part as follows:

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

### STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3182 provides in  
pertinent part as follows:

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.



Section 15-9-31, Code of Alabama  
(1975) provides in pertinent part as  
follows:

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found, or by an information supported by affidavit, in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

### STATEMENT OF THE CASE

On January 15, 1981, the Governor of Alabama issued a rendition warrant for the arrest of the Respondent, Overton David Johnson, the basis of which was a demand for the extradition of the Respondent made by the Governor of North Carolina to the Governor of Alabama (R. p. 75). This warrant was executed on January 21, 1981 (R. p. 76). The Respondent challenged the legality of his incarceration by Petition for Writ of Habeas Corups filed on January 21, 1981, in the Circuit Court of Etowah County, Alabama (R. p. 56).

A hearing on the Respondent's Petition was held on August 25, 1981, at which time the State of Alabama introduced into evidence the North Carolina Demand and allied papers including:

(a) a North Carolina warrant for the Respondent's arrest issued on December 2, 1980 (R.p. 89);

(b) an affidavit by Jack LeBeau, made before a magistrate on December 17, 1980, setting forth facts on which the charge of false pretense was based (R. p. 83;

The Petition for Writ of Habeas Corpus was denied on October 12, 1981 (R. p. 67; see Appendix "A").

On October 12, 1982, the Alabama Court of Criminal Appeals reversed the decision of the Circuit Court of Etowah County, Alabama, in denying the Petition for Writ of Habeas Corpus, holding that the requirements of § 15-9-31, Code of Alabama (1975), Alabama's version of the Uniform Criminal Extradition Act, had not been met (see opinion in Appendix "B"). The Court specifically held that because the warrant of arrest was issued fifteen (15) days before the affidavit of Jack

LeBeau, the Respondent was not lawfully charged with a crime in North Carolina, and therefore that the case should be reversed under Battles v. Stae of Alabama. 389 So.2d 957 (Ala.Crim.App. 1980), cert. den. 389 So.2d 960 (Ala. 1980), cert. den., 452 U.S. 920 (1981).

On October 26, 1982, the State of Alabama filed an application for rehearing, which application was denied on November 23, 1982 (see Appendix "C").

On December 7, 1982, the State of Alabama filed a Petition for Writ of Certiorari to the Alabama Supreme Court, which petition was denied on January 21, 1983 (see Appendix "D").

### STATEMENT OF THE FACTS

The question presented for review is one of the sufficiency of certain documents, previously referred to in the Statement of the Case, to support extradition. Because the question is purely legal, the Petitioner considers further statement of the facts to be unnecessary and therefore respectfully declines to make further statement.

### SUMMARY OF THE ARGUMENT

The interpretation placed upon § 15-9-31, Code of Alabama (1975), by the Alabama Court of Criminal Appeals effectively requires that where a demanding state attempts to extradite an accused by means of copy of an affidavit signed before a magistrate, it must include a copy of a warrant issued subsequent to and based upon the affidavit. This interpretation is contrary to the language of the con-

trolling Federal statute, 18 U.S.C. § 3022, and therefore renders the Alabama statute unconstitutional because it places an illegal restraint on interstate extradition.

#### ARGUMENT

It is generally recognized that because interstate extradition is a right of the State derived from the Federal Constitution, federal law is paramount in extradition proceedings. People ex rel. Dimas v. Shimp, 83 Ill. App.3d 150, 403 N.E.2d 750 (1980); State ex rel. Sieloff v. Golz, 80 Wis. 225, 258 N.W.2d 700 (1977); State v. Parish, 242 Ala. 7, 5 So.2d 828 (1941); 35 C.J.S. Extradition, § 3 (1960). A state in enacting legislation to implement the federal constitutional mandates may permit extradition under less stringent standards than those mandated by federal law, but may not

enact or enforce standards in derogation of the federal rights of other states to obtain the return of persons accused of crimes. People ex rel. Dimas v. Shimp, upra; State ex rel. Sieloff v. Golz, supra; State v. Parish, supra. Therefore state laws which place burdens on extradition beyond those permitted by federal law, whether those laws are legislatively or judicially imposed, and unconstitutional and void. People ex rel. Dimas v. Shimp, supra; State ex rel. v. Sieloff v. Golz, supra; State v. Parish, supra.

The present federal statute controlling interstate extradition, 18 U.S.C. § 3182, provides in pertinent part as follows:

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and

produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.  
[Emphasis added]

The above statute makes no requirement that when extradition is attempted by means of an affidavit before a magistrate, the affidavit must be accompanied by a warrant issued pursuant to and subsequent to the affidavit.



Section 15-9-31, Code of Alabama (1975), a section of Alabama's version of the Uniform Criminal Extradition Act, provides as follows:

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found, or by an information supported by affidavit, in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate thereon, together with a copy of any warrant which was issued thereon. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

[Emphis added]

The interpretation placed upon this statute by the Alabama Court of Criminal Appeals effectively requires that (a) an

affidavit made before a magistrate must be accompanied by a warrant, and (b) the warrant must be issued upon and subsequent to the affidavit. This interpretation, besides being contrary to the clear language of § 15-9-31, has the effect of placing a burden on interstate extradition not provided for in 18 U.S.C. § 3182 and therefore void. Indeed, an interpretation requiring any warrant under the Uniform Criminal Extradition Act has been specifically rejected as unconstitutional in the courts of other states. State ex rel. Sieloff v. Golz, supra; Application of Williams, 76 Idaho 173, 279 P.2d 882 (Sup.Ct. 1955); Ex parte Riccardi, 63 Ariz. 180, 203 P.2d 627 (1949); People ex rel. Gates v. Mulcahy, 392 Ill. 498, 65 N.E.2d 21 (1946). The issuance of a warrant based

on an affidavit is neither necessary nor material to extradition. Application of Williams, supra. Therefore the warrant should be treated as mere surplusage. State ex rel. Sieloff v. Golz, supra. Because the affidavit submitted in the instant case was sufficient to support extradition, the Alabama Court of Criminal Appeals should have affirmed the trial court's decision based on the affidavit and likewise treated the warrant as surplusage.

The instant case appears to be one of first impression before this Honorable Court, and for this reason alone certiorari should be granted. More importantly, however, is the fact that the interpretation by the Alabama Court of Criminal Appeals is placed upon Alabama's version of a uniform statute that has

been widely adopted in form very similar to Alabama's version.<sup>1</sup> Because this decision may serve as precedent in the courts of other states which have enacted this uniform law, and may therefore be used to impede further the rights of demanding states to extradition, this Honorable Court should grant this petition for writ of certiorari and reverse the decision of the Alabama Court of Criminal Appeals.

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<sup>1</sup> It appears that 48 states, along with Puerto Rico and the Virgin Islands have adopted some version of the Uniform Criminal Extradition Act. 11 Uniform Laws Ann. p. 5 (Supp. 1983, p. 15).

### CONCLUSION

In conclusion the Petitioner respectfully submits that this case presents an important question of Federal Constitutional and statutory law which has not been but which ought to be decided by this Honorable Court. For this reason the Petitioner prays that this Honorable Court will issue the writ of certiorari and review the decision and opinion of the Alabama Court of Criminal Appeals , and on such review will reverse the decision of said court.

Respectfully submitted,

---

CHARLES A. GRADDICK  
ATTORNEY GENERAL OF  
ALABAMA

---

JOSEPH G.L. MARSTON, III  
ASSISTANT ATTORNEY  
GENERAL OF ALABAMA

---

WILLIAM D. LITTLE, III  
ASSISTANT ATTORNEY  
GENERAL

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 1983, I did serve the requisite number of copies of the foregoing on the Honorable Robert H. King, Attorney for Respondent, 757 Chestnut Street, Gadsden, Alabama 35901, by placing said copies in the United States Mail, first class postage prepaid.

JOSEPH G. L. MARSTON, III  
ASSISTANT ATTORNEY  
GENERAL

ADDRESS OF COUNSEL:  
Office of the Attorney General  
250 Administrative Building  
64 North Union Street  
Montgomery, Alabama 36130  
(205) 834-5150

82-1578

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ALEXANDER L. STEVAS,  
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NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE  
UNITED STATES

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner

vs.

OVERTON DAVID JOHNSON,

Respondent

APPENDIX

TO THE

PETITION FOR WRIT OF CERTIORARI  
TO THE ALABAMA SUPREME COURT AND  
ALABAMA COURT OF CRIMINAL APPEALS

CHARLES A. GRADDICK  
ATTORNEY GENERAL OF ALABAMA

JOSEPH G. L. MARSTON, III  
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250 Administrative Building  
64 North Union Street  
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(205) 834-5150

ATTORNEYS FOR PETITIONERS

APPENDIX A

OVERTON DAVID JOHNSON,	)	IN THE CIRCUIT
	)	COURT OF ETOWAH
PETITIONER	)	COUNTY, ALABAMA
	)	
VS.	)	
	)	
STATE OF ALABAMA,	)	
	)	CASE NO. <u>CC 81-16</u>
RESPONDENT	)	

ORDER ON PETITION FOR WRIT  
OF HABEAS CORPUS

This matter coming on to be heard on  
Petition for Writ of Habeas Corpus, the  
Court after hearing the evidence finds  
that said writ should be denied.

It is hereby ORDERED, ADJUDGED and  
DECREED by the Court that said writ be  
and hereby is denied and the Defendant  
shall be placed in jail by the Sheriff.  
The Sheriff is ORDERED to notify author-  
ities in North Carolina who are granted  
the right to extradite the Defendant by  
authority of the extradition proceedings.  
Appeal Bond is set a \$7,500.00.



DONE THIS THE 12 DAY OF OCTOBER,  
1981.

/s/ HOBODY G. RAINS  
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have served  
a copy of the foregoing order on the  
District Attorney, Honorable Bob King and  
the Sheriff's Department this 12 day of  
October, 1981.

/s/ Susan D. Cox  
Secretary

APPENDIX B

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT  
THE ALABAMA COURT OF CRIMINAL APPEALS  
OCTOBER TERM, 1982-83

7 DIV. 915

Overton David Johnson

v.

State

Appeal from Etowah Circuit Court  
JOSEPH J. MULLINS, Retired Circuit Judge

The appellant, Overton David Johnson, filed a petition for writ of habeas corpus in th Circuit Court of Etowah County against the State of Alabama on January 21, 1981. This appeal is from a judgment denying appellant's discharge after a hearing of his petition.

The State of North Carolina, through its Governor, sent a requisition warrant,

accompanied by copies of required documents, as follows: Application for requisition of Ronald C. Brown, District Attorney, Post Office Box 7158, Asheville, North Carolina, 28807; application, certification, statutes, arrest warrant, affidavit, allied papers to the Governor of the State of Alabama. The Governor of the State of Alabama issued a rendition warrant for the extradition of the appellant to the State of North Carolina.

The question presented to this Court by the appellant in his brief is that the supporting papers are insufficient to support extradition because the warrant of arrest is not based on an adequate or timely affidavit, therefore the trial court erred to his prejudice when it refused to grant the relief asked in his petition.

At the trial on the petition for the writ of habeas corpus the requisition warrant, and all of the accompanying papers from the State of North Carolina were filed in evidence, together with the rendition warrant issued by the Governor of Alabama.

The appellant testified, in substance, that he had arranged for the payment of \$2,800.00 for the automobile he purchased from Apple Tree Chevrolet of Enke, North Carolina by a draft drawn on the East Gadsden Bank of Gadsden, Alabama. That Mr. George Taylor, Manager of the Apple Tree Chevrolet, talked over the telephone with a representative of the East Gadsden Bank, and after the conversation, stated to the appellant that the bank would honor the draft, and Apple Tree Chevrolet would look to the bank for its money, and for the appellant to take the car back to Alabama with him.

That before the draft was paid the East Gadsden Bank was taken over by the Central Bank of Alabama. That appellant sold the automobile, and the East Gadsden Bank financed it, and that appellant gave the East Gadsden Bank a mortgage on his property to secure debts that appellant owed East Gadsden Bank. That appellant did not know the East Gadsden Bank was about to be taken over by the Central Bank of Alabama. That the appellant was aware of the fact that Apple Tree Chevrolet Company was never paid the purchase price of the automobile.

Code Of Alabama, 1975, Sec. 15-9-31 provides:

"No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found, or by an information supported by affidavit, in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The in-

dictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth." (Emphasis Supplied).

At the trial the appellant pointed out to the trial court that the supporting papers were not sufficient to support extradition because the warrant of arrest was not based on an adequate or timely affidavit.

We set out in full the certificate of Gary L. Childers, Magistrate, the warrant of arrest issued by Gary L. Childers, Magistrate, and affidavit of Jack P. LeBeau, Detective.

"FORM GOV. 1-A

"STATE OF NORTH CAROLINA

"STATE OF NORTH CAROLINA                      CERTIFICATE  
COUNTY OF BUNCOMBE

"I, GARY L. CHILDERS, a duly

appointed, qualified and acting  
Magistrate, or Proper Official, of  
Buncombe, North Carolina,  
County  
Asheville, North Carolina 28807  
Address

do hereby certify that the foregoing  
is a true and correct copy of (1)  
the WARRANT issued by me on December  
2, 1980, against David Johnson,  
charging the said subject with the  
crime of False Pretense, and (2) THE  
AFFIDAVIT on which the Warrant was  
issued.

"IN TESTIMONY WHEREOF, I have here-  
unto set my hand, this the 16th day  
of December, 1980.

"Gary L. Childers  
Magistrate

"Attach Copy of Warrant, with Com-  
plaint or Affidavit on which it was  
issued, to each of the four (4) Sets  
of Application for Requisition at  
the end of the application by the  
Solicitor, said Copy being certified  
as shown above."

OCA #80-12-3914

"STATE OF NORTH CAROLINA  
FILE # \_\_\_\_\_  
County of BUNCOMBE  
Film # \_\_\_\_\_  
"The State of Northa Carolina Vs.  
In The General Court of  
DAVID JOHNSON Justice  
DISTRICT Court Division

55      W      M      CAR SALESMAN  
Age Race Sex      Occupation  
WARRANT FOR ARREST  
RAINBOW DRIVE, GADSDEN, ALABAMA  
Address

"to any officer with authority and territorial jurisdiction to execute a warrant for arrest of the offense charged below:

"THE UNDERSIGNED FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE that on or about the 22 day of OCTOBER, 1980, in the county named above, the defendant named above did unlawfully, willfully, and feloniously AND KNOWINGLY AND DESIGNEDLY WITH THE INTENT TO BEAT AND DEFRAUD OBTAIN A 1977 CHEVROLET CAPRICE CLASSIC 2 DOOR, VIN #IN47U7J186739 FROM APPLE TREE CHEVROLET, INC. ASHEVILLE, N.C. WITHOUT MAKING PROPER COMPENSATION OR BONA FIDE ARRANGEMENTS FOR COMPENSATION. THIS PROPERTY WAS OBTAINED BY MEANS OF PRESENTING A FALSE BANK DRAFT ON EAST GADSDEN BANK, EAST GADSDEN, ALABAMA FOR PAYMENT OF THE CAR. THIS BANK DRAFT WAS NOT HONORED AND WAS NOT NEGOTIABLE., WHEN IN FACT THE DEFENDANT KNEW THAT THE BANK DRAFT PRESENTED TO APPLE TREE CHEVROLET, INC., FOR PAYMENT WAS FALSE. THE PRETENSE MADE WAS CALCULATED TO DECEIVE AND DID DECEIVE. THIS ACT WAS

in violation of the following law:  
G.S. 14-100

"YOU ARE DIRECTED TO ARREST THE DEFENDANT NAMED ABOVE AND BRING HIM



WITHOUT UNNECESSARY DELAY BEFORE A  
JUDICIAL OFFICIAL TO ANSWER THE  
CHARGES SET OUT ABOVE.

"Issued this 2 day of DECEMBER,  
1980, upon information furnished  
under with by the complaintant or  
complainants named below.

"  
\_\_\_\_\_  
Complainant(s) Name, Address or  
Department

JACK LEBEAU #306 BCSD

A TRUE COPY

Gary L. Childers  
Magistrate

Nancy P. Searcy  
Deputy Clerk

\_\_\_\_\_  
File Number

\* \* \*

"THE STATE

VS.

DAVID JOHNSON

RAINBOW DRIVE

GADSDEN, ALABAMA

WARRANT FOR ARREST

Issued 2 day of DEC, 1980

WITNESSES

For State: JACK LEBEAU BCSC  
DAN MIRTO BCSD

MR. GEORGE TAYLOR 667-5221

APPLE TREE CHEV.

MR. GARY SELLERS 667-5221

APPLE TREE CHEV.

ASHEVILLE, N.C.

For Defendant: \_\_\_\_\_"

STATE OF NORTH CAROLINA IN THE GENERAL  
COUNTY OF BUNCOMBE COURT OF JUSTICE  
SUPERIOR COURT  
DIVISION

STATE OF NORTH CAROLINA)  
VS. ) AFFIDAVIT  
DAVID JOHNSON )

"I, Jack P. LeBeau, being first duly sworn, do hereby state the following facts:

"I am a Detective with Buncombe County Sheriff's Department, located in Asheville, North Carolina. On October 22, 1980, I interviewed Mr. George Taylor, the used car manager with Apple Tree Chevrolet, 205 Smokey Park Highway, Enka, North Carolina in reference to a false pretense incident involving the above captioned defendant, DAVID JOHNSON.

"Mr. Taylor reported to me that on October 22, 1980, at approximately 10:00 AM, the defendant approached him regarding the purchase of a used car. The defendant stated at that time that he was the owner of a used car dealership located in Rainbow City, Alabama. After test driving several vehicles Mr. Johnson decided to purchase one (1) 1977 Chevrolet Caprice Classic, 2 door, VIN #IN47U7J186739. At that time all the necessary paperwork was drawn up and signed and Mr. Johnson presented a bank draft in the amount of \$2,800.00 upon East Gadsden Bank, Gadsden, Alabama for payment of said vehicle. Upon completion of this transaction Mr. Johnson stated that he was returning to Alabama. Mr. Taylor presented the bank draft to Wachovia Bank in Asheville, North Carolina, and he was then notified by said bank that the East Gadsden Bank in Alabama would not honor the draft and that same was not negotiable.

"A complaint was filed with myself by Mr. Taylor for False Pretense Charges and subsequently I charged David Johnson and sent a certified copy of the Buncombe

County warrant for False Pretense to Etowah County, Alabama. This warrant was served upon the defendant in Alabama by a Chief Williamson of the Rainbow Police Department, Alabama.

"THIS the 17 day of December, 1980.

" Jack P. LeBeau  
Jack P. LeBeau,  
Detective

'SWORN TO AND SUBSCRIBED  
TO BEFORE ME ON THE 17  
DAY OF DECEMBER, 1980.

"Pauline P. Hawkins  
Magistrate"

In this case all allied papers accompanying the requisition warrant from the Governor of the State of North Carolina, together with the rendition warrant issued by the Governor of the State of Alabama, were placed in evidence at the habeas corpus hearing, therefore it is the duty of the trial court, and this Court on appeal, to examine them and look to their legal sufficiency to justify the issuance of the rendition warrant. Shirley v. State, Ala. 363 So. 2d 104,

Ala. Cr. App. 363 So. 2d 103, Ala. Cr. App. 363 So. 2d 107.

Section 15-9-31, Code of Alabama, 1975, clearly states that there shall be attached to the requisition warrant from the Governor of the foreign state a certified copy of an indictment found or by an information supported by affidavit, in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon.

The certificate dated December 16, 1980 of Magistrate Gary L. Childers is attached to the copy of the affidavit of Jack P. LeBeau, dated December 17, 1980, and to a copy of a warrant of arrest issued by Gary L. Childers on December 2, 1980, and recites that "the foregoing is a true and correct copy of (1) the warrant issued by me on December 2, 1980,

against David Johnson, charging the said subject with the crime of false pretense and (2) the affidavit on which the warrant was issued."

The warrant of arrest of the appellant was issued on December 2, 1980 by Magistrate Gary L. Childers of the State of North Carolina. The affidavit of Jack P. LeBeau was executed on December 17, 1980 before Pauline P. Hawkins, a Magistrate of North Carolina, some 15 days after the warrant was issued.

We hold that the requirements of Alabama Code, 1975, Sec. 15-9-31 have not been complied with, as required by our statute, in this case because the warrant of arrest was issued some 15 days before the affidavit of Jack P. LeBeau was made. The appellant is not lawfully charged with a crime in the State of North Carolina. Therefore, a reversal of this cause should be ordered. Battles v.

State, Ala. Cr. App. 389 So. 2d 957;

Certiorari Denied, Ala. 389 So. 2d 960.

It is, therefore, ordered that this cause be, and it is hereby, reversed and remanded.

The foregoing opinion was prepared by Honorable Joseph J. Mullins, a retired Circuit Judge, serving as a Judge of this Court; his opinion is hereby adopted as that of the Court.

REVERSED AND REMANDED.

All the Judges concur.

APPENDIX C

THE COURT OF CRIMINAL APPEALS OF ALABAMA-  
JUDICIAL DEPARTMENT  
MONTGOMERY, ALABAMA

7 Div. 915

Overton David Johnson

v.

The State

Etowah Circuit Court  
No. CC-81-16

November 23, 1982.

IT IS ORDERED THAT  
THE APPLICATION FOR  
REHEARING BE AND THE  
SAME IS HEREBY  
OVERRULED.



APPENDIX D

January 21, 1983

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT  
IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83  
82-210

EX PARTE: STATE OF ALABAMA  
PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CRIMINAL APPEALS (Re: Overton  
David Johnson vs. State of Alabama)

The Petition for Writ of Certiorari to  
the Court of Criminal Appeals being duly  
submitted to this Court, IT IS CONSIDERED  
AND ORDERED that the petition be denied.  
NO COSTS TAXED.

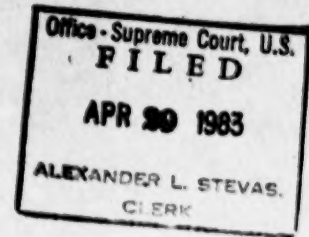
SHORES, J.  
TORBERT, CJ., MADDOX, JONES AND BEATTY,  
JJ., CONCUR.

5/12  
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82-1578

IN THE CIRCUIT COURT OF THE UNITED STATES

OCTOBER TERM, 1982



STATE OF ALABAMA,

Petitioner

vs.

OVERTON DAVID JOHNSON,

Respondent

ARGUMENT AGAINST  
PETITION FOR WRIT OF CERTIORARI

OVERTON DAVID JOHNSON  
Respondent  
P. O. Box 246  
Grant, Alabama 35747

MAY 12 PAGE 18

## ISSUE

DID NORTH CAROLINA COMPLY WITH ALABAMA EXTRADITION LAW WHEN THE EXTRADITION WAS BASED ON WARRANT WITH NO AFFIDAVIT ATTACHED?

## ARGUMENT

David Johnson has not committed any Crime in North Carolina, is poor, in bad health, lost everything he had when East Gadsden Bank closed, does not have monies to defend himself in North Carolina, and when they threaten you with 20 years in prison and you are not rich like Hinkley, there is not much you can do as a poor man but shut-up, take the 2 years plea bargain prison, and hope you can live through it. But if I was rich, I could afford Experts, Hot-Shot Attorneys, pay expenses of the former Executive Vice-President of the East Gadsden Bank to go up and testify as to the truth: that the Bank had agreed to pay the Draft and accept the title to the car when it came through the mail, but that because of mix-up it was returned and it was the Bank's duty under the Agreement to pay and not David (the Executive Vice-President had left the State because of embarrassment of the closing of the Bank and can't be located).

North Carolina failed to comply with the Alabama Extradition Law, which states in substance that no person can be Extradited unless the demand for execution is ... "accompanied by a copy of an Indictment found ... or by a copy of an Affidavit made before a Magistrate there, together with a copy of any Warrant which was issued thereon ... charging person demanded with having committed a Crime under the Law of that State ..." Title 15-9-31, Code of Alabama, (1975). Further, the Supreme Court of the United States held in the case of BATTLES vs. STATE OF ALABAMA, 389 So. 2d., 957 (Ala. Crim. App. 1980), Cert. Den. 389 So. 2d 960 (Ala. 1980), Cert. Den. 452 U.S. 920 (June 1980), that said

Statute, in substance, was valid and was a "Uniform Criminal Extradition Act."

The Alabama Court of Criminal Appeals in David's case found the facts to be as follows:

"At the Trial, the Appellant (David) pointed out to the Trial Court that the supporting papers were not sufficient to support extradition, because the Warrant for Arrest was not based on an adequate or a timely Affidavit ... Section 15-9-31, Code of Alabama, (1975), clearly states that there shall be attached to the Requisition Warrant from the Governor of the Foreign State a certified copy of an Indictment found or by information supported by Affidavit in the State having Jurisdiction of the Crime or by a copy of an Affidavit made before a Magistrate there, together with a copy of any Warrant which was issued thereon.

The Certificate dated December 16, 1980, of Magistrate, Gary L. Childers, is attached to the copy of the Affidavit of Jack P. Labeau dated December 17, 1980, to a copy of a Warrant of Arrest issued by Gary L. Childers on December 2, 1980, and recites that "the foregoing is a true and correct copy of (1) the Warrant issued by me on December 2, 1980, against David Johnson, charging the said subject with the Crime of false pretense and (2) the Affidavit on which the Warrant was issued."

The Warrant of Arrest of the Appellant (David Johnson) was issued on December 2, 1980, by Magistrate, Gary L. Childers, of the State of North Carolina. The Affidavit of Jack P. Labeau was executed on December 17, 1980, before Pauline D. Hawkins, a Magistrate of North Carolina, some 15 days after the warrant was issued."

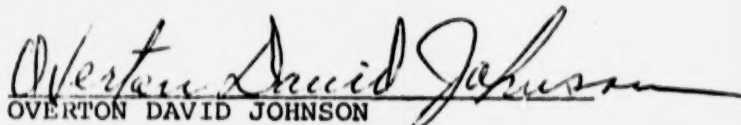
"We hold that the requirements of the Alabama Code (1975), Sec. 15-9-31, have not been complied with, as required by our Statute in this case because the Warrant of Arrest was issued some 15 days before the Affidavit of Jack P. Labeau was made. The Appellant (David Johnson) is not lawfully charged with the Crime of the State of North Carolina. Therefore, a reversal of this cause should be Ordered. BATTLES vs. STATE OF ALABAMA, Ibid."

Alabama and North Carolina now seek to elevate the Issue as to whether an accused in an asylum state has a Constitutional Right to a probable cause Hearing before Extradition. David Johnson has never asserted such a right. Mr. Johnson asks only that North Carolina comply with Alabama Extradition Law. The Law requires, both in Alabama and in North Carolina, in substance, that if Extradition is based on an Affidavit, that a copy of such Affidavit made before

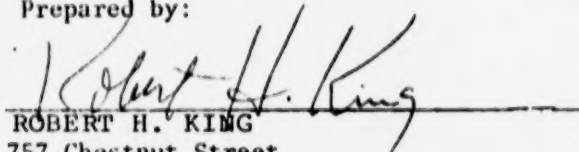
a Magistrate there, together with a copy of any Warrant that was issued therein shall be attached. No such Affidavit was attached to the Warrant issued on December 2, 1980, as was sworn to by Magistrate Childers. If Extradition had been sought on an Indictment, there is no requirement of an Affidavit.

This case presents no Novel Questions and no Constitutional Questions. The Alabama Court of Criminal Appeals was not required to interpret North Carolina Law. Instead, North Carolina is required to comply with Alabama Law. The only issue in this case is whether North Carolina complied with the Alabama Extradition Law and even its own Law. The Answer is clearly "No"..

Respectfully submitted:

  
OVERTON DAVID JOHNSON

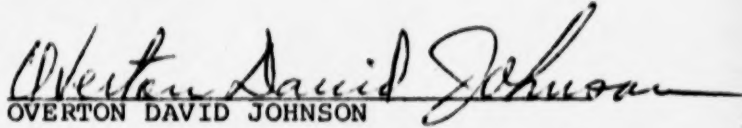
Prepared by:

  
ROBERT H. KING  
757 Chestnut Street  
Gadsden, Alabama 35901  
(205) 547-2431

CERTIFICATE OF SERVICE

This is to certify that I have this day mailed a copy of the foregoing to Honorable Charles A. Graddick, 250 Administrative Building, 64 North Union Street, Montgomery, Alabama 36101.

This the 26<sup>th</sup> day of April, 1983.

  
OVERTON DAVID JOHNSON



IN THE SUPREME COURT OF THE UNITED STATES

STATE OF ALABAMA,  
PETITIONER

VS.

OVERTON DAVID JOHNSON,  
RESPONDENT

) APPLICATION TO APPEAL IN  
) FORMA PAUPERIS  
)

) Case No. \_\_\_\_\_  
)  
)

I, Overton David Johnson, being first duly sworn, deposes and says that I am Respondent in the above entitled cause; that in support of my Motion to proceed without being required to prepay fees, cost or giving security therefor, I state that because of my poverty, I am unable to pay the cost of said proceeding or to give security therefor; that I believe I am entitled to redress:

I further swear that the response which I have made to the questions and instructions below relating to my ability to pay the cost of this cause are true and correct:

1. Are you presently employed? no

2. If the answer to above is "yes", state the place of your employment and the amount of salary and wagers per month which you receive. N/A

3. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or any other source? yes, 1/82-11/82 made \$9700.00, as Truck Driver. Job ended due to bad Health & age. 1/83-3/83 \$12000 on odd jobs. Ardy 4/83 - possibly larger

4. Do you own any cash or checking or savings account? no

5. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishing and clothing)?

no

6. List the persons who are dependent upon you for support and state their age and relationship? Lempie B. Johnson, age 59.

years; Sickly, not worked for years

I, Overton David Johnson, understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Overton David Johnson  
(OVERTON DAVID JOHNSON)

STATE OF ALABAMA  
COUNTY OF ETOWAH

Sworn to and subscribed to before  
me on this the 19<sup>th</sup> day of April,  
1983.

Gene W. Elliott  
NOTARY PUBLIC

My commission expires: 2 16 185